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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. PAUL GORDON BROWN, Defendant and Appellant.	G040059 (Super. Ct. No. 06HF2416) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Richard F. Toohey, Judge. Affirmed.

Wilson Adam Schooley, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Peter Quon, Jr., and Angela M. Borzachillo, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

A jury found defendant Paul Gordon Brown guilty of unlawful possession of ammunition. (Pen. Code, § 12316, subd. (b)(1); all statutory references are to this code.) He contends the trial court erred by refusing to provide a third party culpability instruction, and by refusing to allow him to testify concerning details of his prior felony convictions used to impeach his testimony. For the reasons expressed below, we affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

On December 10, 2006, around 7:30 p.m., Costa Mesa Police Officer Jason Chamness stopped defendant, alone in his 1995 Lexus, for a traffic violation. Chamness searched the car and found a nine-millimeter cartridge in the center console. The officer also found a box containing 11 nine-millimeter cartridges, a magazine containing 12 nine-millimeter cartridges, and a "speed loader" containing six .357 cartridges. All the ammunition was hollow point. The items had been placed in a black stocking cap and stored under the driver's seat in a built-in plastic first aid kit. The parties stipulated defendant had previously been convicted of a felony, which prohibited him from lawfully possessing ammunition.

At the police station, defendant waived his right to remain silent (*Miranda v. Arizona* (1966) 384 U.S. 436) and agreed to talk to Chamness, who asked, "The ammunition I found in your car, where is that, whose is it?" Defendant replied, "Well, it's in my possession, so it's mine. If it comes down to where did I get it from, this, the revolver, speed loader I've had since high school. I, I had it up on my mantle before because I thought it was just cool. I'm pretty amused about that. My father's military, so that's why it was just kinda common." The officer asked, "what about the 9mm?" Defendant replied, "9mm? When I sold my Chiropractor's, uh, estate in, uh, Huntington Beach, he was leaving the country, uh, he had already discarded the firearm, sold the

firearm and he had the box of ammunition and the clip, that were extra pieces. He gave it to me because: A) he didn't want to take it on the plane with him to another country; B) it didn't matter and then it was like, you want it? Okay, cool. He just told me you just can't . . . ." Chamness responded, "And you just left them in your car?" Defendant explained, "When I [] left my apartments . . . and then had to move everything it was: A) I want to keep it in a [] in a lock box or a secured box[] [¶] . . . [¶] [a]nd that's the only place I could find, my car, that made sense that, you know what I mean." Chamness asked, "Was that right underneath your seat in that box?" Defendant said "Yes," and then elaborated, "If the . . . ammunition is in reach you can't throw anything, you can throw ammunition at somebody but that's, that's the biggest fear. Yes, I understand your fear, ammunition, but there is no firearm. Is there a charge for having ammunition within reach? I mean, . . . I'm just curious." Chamness explained it was illegal to possess certain ammunition.

Defendant appeared to be under the influence of methamphetamine at the time of the stop and during the interview. He admitted using the drug within the previous 36 hours.

Defense

Anaheim Police Officer Erin Moore testified she found defendant's car parked illegally in an alley on the morning of November 10, 2006. After learning defendant had an outstanding warrant, she arrested him and searched the car. The Lexus contained bags of clothing and debris throughout. Defendant asked her to give his keys and cell phone to Mina Pedraza, who had emerged from a nearby apartment. Defendant told Pedraza to park his car and he would get it later.

Three days later, defendant telephoned Anaheim police to complain about Pedraza's failure to return his car. At defendant's behest, Officer Shiao Wang telephoned Pedraza and asked about defendant's car. Pedraza was not cooperative. She claimed to

have given the keys to a friend, but refused to provide contact information or meet the officer at the police station.

Ryan Shelvey had known Pedraza about six years and had met defendant a few times. Around November 10, he helped Pedraza move from Anaheim to Garden Grove. After the move, Pedraza arrived at his apartment with a large basket containing items wrapped in towels and asked him to place them in a closet. She removed a speed loader and a clip from the basket, and he stored the basket in a closet. About nine days later, he looked in the basket and saw defendant's belongings, including family photos and business documents, but did not see any ammunition in the basket. He contacted defendant and returned the items.

A Lexus service manager testified their records showed defendant brought his car to the dealer on November 13 to have a new key made and a door lock transmitter installed. The dealer returned the car on November 17.

Defendant testified[1] Pedraza, whom he knew only by her nickname "Trouble," was a friend of a girl he dated. Although he did not know Pedraza well, he agreed to help her move on November 10. He owned other cars and stored office equipment and personal items in the Lexus. He consented to Officer Moore's search of his car, but denied he told the officer to give Pedraza his car keys and cell phone.

After his release from Theo Lacy jail on November 12, he walked to his Costa Mesa apartment. He called Pedraza the next day to arrange the return of his property. Pedraza agreed to come to his house, but she failed to show up.

A friend, Christopher Hughes, drove him to Pedraza's former apartment, but it was vacant. He telephoned the police to report his car stolen. Officer Wang phoned Pedraza. Another officer located defendant's car nearby. The doors were locked but the trunk lock had been punched out. Defendant's property had been removed from

[1] The prosecutor impeached him with his 1996 conviction for submitting false claims to an insurance company, and 1997 convictions for burglary and grand theft.

the trunk, but some of his property he kept inside the car was now in the trunk. Defendant had the car towed to the Lexus dealer. He drove the car a few times before his arrest on December 10, but never looked in the under seat storage box and "did not even know it was there."

Defendant claimed he used a small amount of methamphetamine about two days before December 10. At the time of his arrest and interview, he felt floating and euphoric from ingesting methamphetamine and drinking alcohol. Defendant had never seen the stocking cap or other items. Although he recalled the interview with Chamness, he did not recall admitting the ammunition belonged to him or providing other information about it. Defendant stated he "was for the most part unaware of the reality behind what the questions meant and/or the severity. I thought I was being arrested for driving on a suspended [license] and I was blowing off the answers [to] questions with little disregard."

On cross-examination, defendant admitted he was in the process of moving from his apartment three or four days before the December 10 stop, and he had spent one night in his car.

Following a trial in February 2008, the jury found defendant guilty of illegally possessing ammunition.[2] In March 2008, the court sentenced defendant to two years in prison.

[2] Before trial, defendant pleaded guilty to driving with a suspended license (Veh. Code, § 14601.1, subd. (a)), trespass (§ 602, subd. (o), and being under the influence of a controlled substance (Health & Saf. Code, § 11550).

II

DISCUSSION

A. *The Trial Court Did Not Err by Declining Defendant's Instruction on Third Party Culpability*

Defendant requested the trial court give a special instruction on third party culpability.[3] Counsel argued that even though the jury would be instructed on the prosecution's burden of proof, the jury might conclude the defense had to prove Pedraza was responsible for placing the ammunition in defendant's car. The court declined to give the instruction because other instructions covered the issue. We disagree with defendant's contention this constituted reversible error.

A criminal defendant may introduce evidence of third party culpability if it raises a reasonable doubt as to his guilt, but the evidence must link the third person to the crime beyond mere motive or opportunity to commit the offense. (*People v. Robinson* (2005) 37 Cal.4th 592, 625.) Upon request, the trial court must give an instruction that "pinpoint[s]" the defense theory, where substantial evidence supports the requested instruction and it is not argumentative or duplicative. (*People v. Hughes* (2002) 27 Cal.4th 287, 361; *People v. Earp* (1999) 20 Cal.4th 826, 886.)

Here, the evidence did not warrant the instruction. That Pedraza may have possessed the ammunition and placed it in defendant's car at an earlier time does not exonerate defendant or establish her culpability for the crime defendant was accused of committing. Defendant's guilt or innocence hinged on whether he knowingly possessed the ammunition when apprehended, and Pedraza's earlier possession does not necessarily

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[3] Defendant's proposed special instruction provided: "The People must prove that the defendant committed possession of ammunition by a prohibited person. The defendant contends he did not commit this crime and that another person was the perpetrator. [¶] The People must prove that the defendant committed the crime with which he is charged. The defendant does not need to prove that the other perpetrator committed the crime. [¶] If you have a reasonable doubt about whether the defendant was the perpetrator of the crime, you must find him not guilty."

establish her culpability for the offense or shed any light on defendant's responsibility for the crime.

Defendant was not hindered in arguing that Pedraza bore responsibility for his predicament. More importantly, the trial court instructed the jury on the presumption of innocence and the reasonable doubt standard of proof. But even "[a]ssuming for the purposes of argument that the trial court erred, any such error was harmless. The jury was instructed on reasonable doubt and burden of proof, and could have acquitted defendant had it believed defendant's testimony that [others] were responsible for [the crime]. Had the court instructed the jury . . . regarding third party culpability, there is no reasonable probability that the result would have been different in light of the other instructions provided to the jury. [Citation.] Thus, any error was harmless." (*People v. Gutierrez* (2009) 45 Cal.4th 789, 825.)

B. *The Trial Court Did Not Err by Prohibiting Defendant from Testifying About the Underlying Circumstances of His Prior Felony Convictions*

Defendant contends the trial court erred when it ruled he could not testify about the underlying circumstances surrounding his prior felony convictions. Defendant argues the rule prohibiting reference to the underlying details of prior convictions is designed to prevent the prosecutor from unearthing potentially prejudicial facts that could affect a defendant's right to a fair trial. Because the rule exists to protect the accused, defendant reasons that a criminal defendant may choose to offer exculpatory or mitigating details of his or her prior convictions. Under the circumstances here, we do not find defendant's contention persuasive.

The trial court permitted the prosecutor to impeach with evidence he suffered prior felony convictions for insurance fraud, burglary, and theft. To lessen the impact of the impeachment, defendant testified on direct examination that he had been convicted of these offenses. Defense counsel asked defendant whether he had pleaded guilty to insurance fraud, but the court sustained the prosecutor's relevancy objection and

struck defendant's response, explaining it was not relevant whether defendant pleaded guilty. The court also refused to allow counsel to inquire into the basis of the convictions, or explain the circumstances surrounding defendant's convictions. Counsel explained defendant "obviously knows that the [prosecutor] was planning to impeach him with the insurance fraud. So, the jury so far has heard he's a convicted felon . . . . And the court's going to instruct them as to witness credibility and the fact he has been convicted of a felony . . . . [¶] But if they're only going to hear he's been convicted without allowing him an explanation as to why he was convicted or what the circumstances are involving it it's a one-way street. He just has to admit it and they just get to determine credibility based on that. They don't get to hear the full story of what happened. [¶] And I think it's important that, you know, [he]'s testified for the last 11 years he's owned his own company, he stayed out of the trouble, relatively speaking. He's owned his own company. He's not been in prison or we haven't heard any other testimony. [¶] I think it's important that the jury gets a full picture that he's not just some felon from 1996." The trial court rejected defendant's argument and sustained the prosecutor's objection.

The scope of inquiry when a criminal defendant is impeached with a prior felony conviction does not extend to the details and surrounding circumstances of the offense. (*People v. McClellan* (1969) 71 Cal.2d 793, 809; *People v. Heckathorne* (1988) 202 Cal.App.3d 458, 462.) Defendant acknowledges this well-settled rule, but, as noted above, he argues "the defendant himself may adduce them [the details of the prior] for his own benefit." In reaching this conclusion, defendant relies on dicta from *People v. Thomas* (1988) 206 Cal.App.3d 689 (*Thomas*).

In *Thomas*, the appellate court held that the crime of assault with a deadly weapon involves moral turpitude and therefore may be used to impeach a criminal defendant. (See *People v. Castro* (1985) 38 Cal.3d 301, 317 ["[A] witness' prior conviction should only be admissible for impeachment if the least adjudicated elements

of the conviction necessarily involve moral turpitude"].) In a footnote, the *Thomas* court observed that a defendant should be allowed to elicit from witnesses "those rare extenuating circumstances which might negate the moral turpitude ordinarily associated with the offense . . . ." (*Thomas, supra,* 206 Cal.App.3d at p. 701, fn. 6.) The court explained the prosecutor may not question the witness about the underlying details of the prior conviction, but "this restriction is for the protection of the defendant, who should be permitted to waive the protection if his explanation will tend to minimize the inference of moral turpitude otherwise deducible from the fact of conviction." (*Ibid.*)

Defendant's reliance on *Thomas* is unavailing. Thomas addressed whether assault with a deadly weapon constituted a crime of moral turpitude under *Castro*'s least adjudicated elements test. Here, there is no question that defendant's prior convictions for insurance fraud, burglary and theft demonstrate the "presence of moral turpitude." (*Thomas, supra*, 206 Cal.App.3d at p. 698.) Nor did defendant offer any evidence of "rare extenuating circumstances" that would negate the inference of moral turpitude. Instead, he sought to explain all the circumstances involved in his prior convictions, which included his voluntary guilty plea, his status as a parolee and a discussion of post sentencing circumstances. This hardly constitutes the "brief explanation" contemplated in *Thomas*. (*Id.*, at p. 701, fn. 6.) We therefore conclude the trial court did not err in rejecting defendant's efforts to introduce evidence concerning the details and underlying circumstances of his prior convictions.

III

DISPOSITION

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

FYBEL, J.